

*In the Matter of Tameshia Russell, Motor Vehicle Commission*  
CSC Docket No. 2011-3066  
**(Civil Service Commission, decided August 17, 2011)**

Tameshia Russell, a Secretarial Assistant 1 (Non-Stenographic), represented by Daniel S. Sweetser, Esq., appeals the decision of the Motor Vehicle Commission to reassign her from the Assistant Chief Administrator's Office to the Motor Carriers Unit.

By way of background, the appellant, a Secretarial Assistant 1 (Non-Stenographic), was assigned as a secretary to Assistant Chief Administrator Gregory Feldman.<sup>1</sup> In January 2011, she was notified that she would be reassigned to the Motor Carriers Unit, headed by Nancy Philburn, a Manager 2, Division of Motor Vehicles, effective January 29, 2011.

On appeal, the appellant asserts that she was not provided a reason for her reassignment and she believes that it was done in bad faith and/or as a means to discipline her. Additionally, she asserts that as a Secretarial Assistant 1 (Non-Stenographic), her previous assignment to the Assistant Chief Administrator was appropriate. However, she is now assigned to a Manager 2, which is a significantly lower title.

In response, the appointing authority initially asserts that a meeting was scheduled on January 19, 2011 to discuss the appellant's reassignment. However, she abruptly left the meeting. Therefore, a follow-up e-mail was sent to her on January 24, 2011. The appointing authority argues that it had significant justification to reassign the appellant to ensure operational effectiveness. Prior to the reassignment, it asserts that it had counseled the appellant on a number of occasions, concerning her use of headphones while working at her desk, her rudeness to callers, her failure to follow or follow-up on assignments and her inability to act as part of the team to get assignments accomplished in a timely fashion. It notes, as an example, that on December 23, 2010, the appellant was asked to stay until closing to cover phones and to assist Feldman with an assignment, while other employees were allowed to leave early. However, the appellant left work, without permission, and Feldman had to enlist the aid of other staff from another division to complete the assignment. The appointing authority maintains that this matter was dealt with through discussions, rather than discipline as a "courtesy" to the appellant. However, her behavior failed to improve, and she continued to act in a disruptive manner and refused to cooperate with other staff. As a result, the appointing authority determined that the appellant could not

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<sup>1</sup> Personnel records indicate that Feldman was appointed to the unclassified title of Confidential Assistant, effective August 30, 2010.

effectively work as a team member in the Assistant Chief Administrator's Office as her continued presence was having a negative influence on productivity and efficiency and she was therefore reassigned.

In response, the appellant initially disputes the allegations of the appointing authority that she had been counseled on numerous occasions for alleged performance issues. In this regard, she notes that in her most recent Performance Evaluation System (PES) in July 2010, the former Assistant Chief Administrator Daria Gerard, indicated that the appellant was an asset and "always a pleasure to deal with" and that all staff "work cooperatively and professionally." She argues that regardless, Civil Service law and rules are clear that transfers and reassignments may not be utilized as disciplinary action, except when disciplinary procedures have been utilized. *See N.J.S.A. 11A:4-16 and N.J.A.C. 4A:4-7.7.* The appellant maintains that since the appointing authority acknowledges that her reassignment was for disciplinary reasons, her reassignment was illegal and she must be reinstated to her former assignment without delay. Additionally, the appellant argues that by reassigning her, the appointing authority has assigned her duties that are inconsistent with her permanent title of Secretarial Assistant 1 (Non-Stenographic). Specifically, an individual in that title is to be assigned to a deputy commissioner or division director or their organizational equivalents, superintendents or chief administrators. However, the appointing authority assigned her to a Manager. Finally, the appellant asserts that she is also entitled to counsel fees in the amount of \$1,240 (6.2 hours at \$200 per hour).

In response, the appointing authority maintains that the appellant "was not disciplined and she suffered no harm in this matter." Rather, as previously noted, the appellant was "reasonably and in good faith counseled repeatedly and told of her performance and behavior expectations; however, she failed to improve in either area." Therefore, she was reassigned, which is in its discretion to do so. *See N.J.A.C. 4A:4-7.2.* The appointing authority argues that it "reasonably and in good faith through counseling, not disciplinary action, attempted to improve [the appellant's] behavior and performance." In this regard, it maintains that, in the past, personnel relationship issues have deteriorated to such an extent that, in order to maintain operational effectiveness, it required the reassignment of other employees. Finally, it asserts that pursuant to *N.J.S.A. 11A:4-16*, it is the appellant's burden of proof to establish that her reassignment was made in bad faith. Since she has failed to do so, her appeal must be dismissed.

It is noted that the job specification for Secretarial Assistant 1 (Non-Stenographic) reveals that an individual in that title may be assigned as a secretary to deputy commissioners, assistant commissioners or division directors or their organizational equivalents, superintendents or chief administrators of institutions, or vice presidents of state colleges.

## CONCLUSION

*N.J.A.C.* 4A:4-7.2 states that a reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organization unit. Reassignments shall be made at the discretion of the head of the organizational unit. Further, *N.J.A.C.* 4A:4-7.7 states that when an employee challenges the good faith of a reassignment, the burden of proof is on the employee. That section also provides that such an action may not be used as part of a disciplinary action, “except when disciplinary procedures have been utilized.” *See also, N.J.S.A.* 11A:4-16.

In the instant matter, the appointing authority asserts that it counseled the appellant on a number of occasions concerning her performance issues. However, her behavior failed to improve, and she continued to act in a disruptive manner and refused to cooperate with other staff. The appointing authority argues that the appellant’s reassignment was not for a disciplinary reason. Instead, it asserts that it has the discretion to reassign any employee to maintain operational efficiency. Although the Commission agrees that an appointing authority has the discretion to reassign employees, such reassignments may not be utilized as discipline without utilizing the appropriate disciplinary procedures. In the instant matter, the appointing authority repeatedly states that the appellant has performance issues, and that it has “counseled” her and decided not to discipline the appellant as a “courtesy.” However, not utilizing the appropriate disciplinary procedures is not a “courtesy” where, as here, some adverse action has occurred, *i.e.*, the appellant’s reassignment. Two of the main purposes of Civil Service law and rules are to ensure certain protections to career service employees and to ensure that all employees are properly classified. One of the protections provided to career service employees is that prior to being disciplined, an employee has an opportunity to review the charges and an opportunity to dispute those charges. The appellant was not provided with that opportunity prior to being reassigned. Therefore, within 20 days of the issuance of this decision, the appointing authority shall issue a Preliminary Notice of Disciplinary Action (PNDA). If the appointing authority does not issue a PNDA within 20 days of this decision, then the appellant is to be returned to her assignment in the Assistant Chief Administrator’s Office.

Additionally, *N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned to a job title. *N.J.A.C.* 4A:3-3.1(b) provides that positions in the career service shall be assigned on the basis of a job analysis, which describes the duties and responsibilities to be performed and the level of supervision exercised and received, and minimum education and experience requirements. Moreover, *N.J.A.C.* 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. The job specification for Secretarial

Assistant 1 (Non-Stenographic) reveals that an individual in that title may be assigned as a secretary to deputy commissioners, assistant commissioners or division directors or their organizational equivalents, superintendents or chief administrators of institutions, or vice presidents of State colleges. However, the appointing authority has reassigned the appellant to a Manager 2, which would constitute a demotion since that assignment is at a lower level than required by her title of Secretarial Assistant 1. Since that assignment is not appropriate for the appellant's title, the appointing authority would either have to demote the appellant by instituting disciplinary procedures or layoff procedures or return the appellant to an appropriate position. If the appointing authority proceeds with discipline, then it must also consider the appellant's classification. In this regard, if the appointing authority does not assign her to an appropriate position, it must implement layoff procedures in order to effectuate the reclassification of the appellant's position. *See N.J.S.A. 11A:8-1 and N.J.A.C. 4A:8-1.6.*

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989).* As noted above, the appointing authority has been ordered to issue a PNDA to the appellant within 20 days of the issuance of this decision or return her to her permanent position. If, at any time, the appointing authority does not adhere to this timeframe without an approved extension of time, it shall be assessed a fine of \$100 per day for each day of continued violation up to a maximum of \$10,000.

Finally, since this matter is being remanded to the appointing authority, the issue of counsel fees is premature.

### **ORDER**

Therefore, the Commission orders that the Motor Vehicle Commission either initiate disciplinary procedures and issue Tameshia Russell a PNDA or return her to her position as a Secretarial Assistant 1 (Non-Stenographic) in the Assistant Chief Administrator's Office within 20 days of the issuance of this decision. If the Motor Vehicle Commission does not take one of the aforementioned actions within 20 days of the issuance of this decision, it shall be assessed a fine of \$100 per day for each day of continued violation up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.